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July 29, 2005

VIA ELECTRONIC FILING

Chairman Kevin Martin
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: *In the Matter of SBC Communications, Inc. and AT&T Corporation Applications for Approval of Transfer of Control*, WC Docket No. 05-65

Dear Chairman Martin:

In its comments in the above referenced proceeding, Telscape Communications, Inc. ("Telscape"), urged the Commission to impose certain conditions on any approval of the proposed SBC/AT&T merger similar to the conditions imposed on the SBC/Ameritech merger in 1999.[1] This letter addresses one of Telscape's recommended conditions – that the Commission require the merged SBC/AT&T to provide a more steeply discounted rate for a basic two-wire residential loop.[2] This condition is intended to address the substantial reduction in

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1 Telscape Comments at 4-6.

2 Telscape additionally recommends that SBC/AT&T be prohibited from charging unwarranted manual processing charges, similar to the restructuring of OSS charges the Commission required of SBC/Ameritech. Where SBC/Ameritech did not make an electronic interface available to a CLEC for processing orders of 30 lines or less, the Commission required SBC/Ameritech to eliminate any extra charge for manual processing and instead charge only the rate for processing similar orders electronically. *Applications of Ameritech, Transferor, and SBC Communications Inc., For*

residential telephone competition that would otherwise result from the merger by preserving and enhancing the ability of competitive carriers to obtain necessary loop facilities on a fair and reasonable wholesale basis. Telscape estimates that SBC continues to serve about 84 percent of the telephone market in California, with AT&T holding a significant portion of the remainder. Without some additional discount for residential loops, along the lines adopted in the SBC/Ameritech merger, the SBC/AT&T merger will severely impair residential telephone competition.

Telscape is a competitive carrier specializing in the provision of local and long distance services to residential households in California, the majority of which consist primarily of Spanish-language-dominant, low-income families residing in inner city and suburban areas. Many of these do not have the means to afford broadband or cable services. Telscape, like virtually all competitors serving the residential market, relies on facilities and services acquired from other carriers as inputs for its own retail services. Telscape primarily utilizes its own switching facilities in conjunction with obtaining unbundled loops from SBC (the "UNE-L" approach). Although Telscape may obtain other facilities and services from alternative wholesale providers in some areas, it is fully dependent on SBC's wholesale provision of residential copper loops.

As Telscape noted in its comments, establishment of a merger condition requiring wholesale loops to be provided at increased discounts is not

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Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25,63, 90, 95, 101 of the Commission's Rules, Memorandum Opinion and Order,), ¶ 384 and Appendix C, ¶ 35 (1999) ("*SBC/Ameritech Merger Order*"), *vacated in part sub nom.*, *Ass'n of Communications Entrs. v. FCC*, 235 F.3d 662 (D.C. Cir. 2001). While SBC has now made electronic service ordering interfaces available in California, it continues to charge manual (semi-mechanical) service order charges for many electronically-submitted orders, which results in the same circumstance the Commission sought to avoid, namely that CLECs pay excessive and unjustified manual service order charges. Unless the Commission curbs this practice, competition will be hindered by these excessive costs while SBC and AT&T work diligently to integrate their back-office systems and reduce their own costs.

without precedent.[3] The Commission imposed similar conditions in conjunction with its approval of both the SBC/Ameritech merger and the Bell Atlantic/GTE merger.[4] Indeed, after negotiating at length with the Commission during review of their proposed merger, SBC and Ameritech voluntarily committed to certain conditions, including providing specific carrier-to-carrier promotions analogous to those Telscape advocates in this proceeding. Reasoning that imposition of those conditions would "offset the loss of probable competition between SBC and Ameritech for residential services in their regions and … facilitate market entry, [the Commission required SBC/Ameritech to offer certain carrier-to-carrier] promotions designed specifically to encourage rapid development of local competition in residential and less dense areas."[5] These promotions included, on average within each state, a 25-percent discount below the lowest applicable monthly recurring rate established by the state commission for unbundled local loops used in the provision of residential local service, not advanced services, and not used in combination with SBC/Ameritech's local switching.[6] SBC/Ameritech was required to offer this promotional discount to CLECs for at least two years following the closing of the merger,[7] and once obtained, the discounted rate continues for 36 months from loop installation or until service is terminated at that location with that CLEC, whichever is shorter.[8] Telscape believes a similar promotional loop discount – at a reduction from the TELRIC rate – should be made available for residential loops as a condition for approval of the SBC/AT&T merger. While SBC/AT&T would still gain a strong competitive advantage post-merger, such

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3 Telscape Comments at 6 n.2.

4 *SBC/Ameritech Merger Order,* Appendix C, ¶¶ 45-6; *Application of GTE Corporation, Transferor, and Bell Atlantic Corporation, Transferee, For Consent to Transfer Control of Domestic and International Section 214 and 310 Authorization and Application to Transfer Control of a Submarine Cable Landing License*, Order, ¶ 309 (2002) ("*Bell Atlantic/GTE Merger Order*").

5 *SBC/Ameritech Merger Order* ¶ 390.

6 *Id.* ¶ 391.

7 SBC/Ameritech was required to offer the promotion beginning 30 days after closing the merger and continuing until the latest of the following: (a) 24 months after commencement; (b) SBC/Ameritech received 271 authority in the relevant state; or (c) SBC/Ameritech entered 15 out-of-territory markets pursuant other merger conditions. *SBC/Ameritech Merger Order*, Appendix C, ¶¶ 45-6.

8 *Id.*, Appendix C, ¶¶ 45-6.

a condition would help level the playing field by placing Telscape and similarly-situated CLECs in positions closer, from the standpoint of the actual costs they face, to SBC's position and would also reduce some of the CLECs' vulnerability to predatory pricing or other anti-competitive acts by SBC.

In granting the SBC/Ameritech merger, the Commission expressed its commitment "to spur facilities-based competition to serve residential customers."[9] The conditions were intended to lower entry barriers for residential competition and induce quick entry into the residential markets:[10] "by targeting the promotions to the residential market, these conditions will bring more competitive offerings to residential customers that have less choice today than large or medium-sized business customers."[11] Furthermore, the Commission hoped to "motivate competing carriers to enter the residential market faster to secure the benefit of the promotions" and to "establish a presence in residential markets that can be sustained after expiration of the promotional discounts."[12]

Sadly, the state of competition in the residential market has not changed significantly in the six years since the SBC/Ameritech merger, and inducements are still necessary to encourage thriving residential competition. SBC still continues to be the dominant local exchange carrier throughout its region. In California, Telscape estimates that about 16 percent of the local exchange market is held by CLECs.[13] Of that share, half is currently held by AT&T and MCI, both of which claim to be exiting the residential market and are proposing to merge with

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9 *Id.* ¶ 494.

10 *Id.* ¶ 440.

11 *Id.* ¶ 494.

12 *Id.*

13 *In the Matter of the Joint Application of SBC Communications Inc. (SBC") AT&T Corp. ("AT&T") for Authorization to Transfer Control of AT&T Communications of California (U-5002-C), TCG Los Angeles, Inc. (U-5462-C), TCG San Diego (U-5389-C), and TCG San Francisco, (U-5454-C), Which Will Occur Indirectly as a Result of AT&T's Merger With a Wholly-Owned Subsidiary of SBC, Tau Merger Sub Corporation, Docket A.05-02-027*, Opening Testimony of Jeff Compton on Behalf of Telscape Communications, at 3 (filed with the California PUC on June 24, 2005) ("Compton Testimony").

separate major ILECs.[14] Despite AT&T's and SBC's insistence that AT&T no longer has any interest in competing in the consumer telephone market, Telscape still believes that AT&T's presence as an independent carrier would be beneficial in curbing anti-competitive behavior by SBC. Although AT&T and MCI may no longer be actively marketing to new customers, their interest in serving their current customer bases should provide incentives to maintain a watchful eye on ILEC pricing and marketing strategies.

The Commission has already expressed its grave concern over the concentration of major carriers in the industry.[15] The Commission stressed that the SBC/Ameritech merger "remove[d] yet another independent major incumbent LEC, thereby further escalating the burden on any future major incumbent LEC merger applicants."[16] While this merger does not involve two major incumbent LECs, it has even greater competitive implications because it unequivocally reduces the number of direct residential telephone competitors in SBC's region, unlike the mergers between major ILECs which reduced potential competition for each ILEC's region. Competition between ILECs would require one of them to begin providing service out of region, something none has yet chosen to do on a wide-scale basis (SBC's unfulfilled "30 city" promise in the SBC/Ameritech merger notwithstanding). However, AT&T now directly competes with SBC, both for retail local and long distance services as well as for wholesale services. Because SBC has gained section 271 authority throughout its region, this merger includes two large providers of local and long distance services. The Commission believed that merger conditions would mitigate harm from the loss of *probable* competition between SBC and Ameritech.[17] The loss of *actual* competition here between SBC and AT&T certainly justifies substantial conditions to ensure competition in both the retail and wholesale markets remains viable.

The Commission has also subsequently noted the ongoing value of the merger conditions. In granting SBC's section 271 authority in Texas, the Commission further confirmed its findings in the *SBC/Ameritech Merger Order* that the carrier-to-carrier promotions are beneficial because they encourage residential

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14 *Compton Testimony at 3.*

15 *SBC/Ameritech Merger Order* ¶ 362.

16 *Id.*

17 *Id.* ¶ 422.

competition.[18] Furthermore, the Commission recently confirmed its reliance on those conditions in rejecting SBC's request to cease providing independent audits of its compliance with the merger conditions. The Commission upheld its earlier view that "[o]nly a strong corporate compliance program, in conjunction with the independent audit and other enforcement mechanisms, will enable consumers to realize the full benefits of the conditions."[19] Although SBC argued that an audit was not necessary to ensure its compliance with the carrier-to-carrier promotions, the Commission disagreed and required SBC to continue providing independent audits, thus indicating its continued reliance on those conditions to satisfy the public interest.[20]

Because SBC is now, by far, the most dominant competitor in the mass-market local exchange services market and will have greater market power after the acquisition of AT&T, it is vital that the Commission take steps to ensure that the interests of the most vulnerable consumers – residential end users, particularly those in economically-disadvantaged areas – are preserved. Many of these consumers cannot afford broadband or cable, making it impossible for the Commission to rely on speculation that cable-provided VoIP will bring competitive alternatives to these consumers. Clearly, SBC and AT&T "bear an additional burden in establishing that a proposed merger will, on balance, be pro-competitive and therefore serve the public interest, convenience and necessity."[21] Because AT&T and SBC currently compete head-to-head, there is, if possible, more pressing need to adopt merger conditions in this proceeding in order to ensure that competition can

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18 *Application by SBC Communications Inc., Southwestern Bell Telephone Company, And Southwestern Bell Communications Services, Inc. d/b/a Southwestern Bell Long Distance; Pursuant to Section 271 of the Telecommunications Act of 1996 To Provide In-Region, InterLATA Services In Texas*, Memorandum Opinion And Order, CC Docket No. 00-65, ¶ 388 n.1114 (2000) ("*SBC TX 271 Order*") (citing *SBC/Ameritech Merger Order* ¶ 390).

19 *Applications of Ameritech, Transferor, and SBC Communications Inc., For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25,63, 90, 95, 101 of the Commission's Rules*, Order, CC Docket. 98-141, ¶ 5 (2005) ("*SBC/Ameritech Audit Order*").

20 *SBC/Ameritech Audit Order* ¶ 6.

21 *SBC/Ameritech Merger Order* ¶ 362.

remain vibrant in the local residential marketplace. With all the recent emphasis on broadband services and facilities, it may be easy for the Commission to overlook the continued importance of basic copper loops. However, they are, and will remain for many years, the only viable communications pathway to many end users, particularly residential and lower-income consumers. Thus, the Commission should only approve the proposed SBC/AT&T merger with appropriate conditions, including a substantial discount below TELRIC-based rates for basic two-wire residential loops, that would tilt the balance of interests to favor, rather than harm, the public.

Sincerely,

/s/

Danny E. Adams

cc: Commissioner Abernathy
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